

Message Text

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ACTION IO-13

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C O N F I D E N T I A L IAEA VIENNA 10412

DEPT PASS IO/SCT AND NRC

E.O. 11652: GDS
TAGS: IAEA, PARM, TECH, ENRG, EEC
SUBJECT: IAEA REACTION TO EURATOM PROPOSAL

REFS: A) EC BRUSSELS 12423; B) EC BRUSSELS 12427; C) IAEA VIENNA
10167

1. D. A. FISHCER, DIRECTOR, DIVISION OF EXTERNAL
RELATIONS IAEA, INVITED US, UK AND CANADIAN MISSIONS TO
INFORMAL BRIEFING ON RESULTS OF DECEMBER 20 EUATOM/IAEA
MEETING IN VIENNA (CITED REFTEL A, PARA 3). EURATOM
PARTICIPANTS IN DECEMBER 20 MEETING WERE HAMMER,
SCHLEICHER AND LONGO. SUBSTANCE OF EURATOM PROPOSAL TO
IAEA WAS AS DESCRIBED REFTEL B.

2. ACCORDING TO FISHER, THREE EC STATES PARTY TO
THE EURATOM/IAEA SAFEGUARDS AGREEMENT (INFCIRC/193),
SIGNED IN 1973, NOW FIND THEY REQUIRE LEGISLATION IN ORDER
TO IMPLEMENT THAT AGREEMENT: THEY ARE BELGIUM, FRG AND LUXEMBOURG.
EURATOM PARTICIPANTS IMPLIED THAT THE LUXEMBOURG
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SITUATION SHOULD BE NO PROBLEM (NO NUCLEAR FACILITIES)
BUT NOTED THAT CONSIDERABLE TIME WOULD BE REQUIRED FOR
BELGIUM (9 TO 12 MONTHS) AND FRG (4 TO 5 MONTHS,
USING "ACCELERATED" PROCEDURE) TO ENACT NECESSARY
LEGISLATION.

3. TO OVERCOME PROBLEM INHERENT IN THESE FURTHER DELAYS, EURATOM MADE PROPOSAL DESCRIBED REFTEL B. SECRETARIAT'S UNDERSTANDING IS THAT IN THE PERIOD OF "DE FACTO" IMPLEMENTATION, THE FULL PROVISIONS AND SCOPE OF INFCIRC/193 WOULD APPLY, I.E., IT WOULD NOT BE A PARTIAL, SELECTIVE OR TRIAL OPERATION. THIS WOULD BE EFFECTED BY EXCHANGE OF LETTERS BETWEEN IAEA DIRGEN AND EACH OF THE GOVERNMENTS WHICH HAVE SIGNED IAEA-EURATOM AGREEMENT AS WELL AS EC. THE INDIVIDUAL GOVERNMENTS WOULD MAKE WHATEVER ENABLING ARRANGEMENTS WERE NECESSARY, CONTRACTUAL OR OTHERWISE, WITH FACILITIES UNDER THEIR JURISDICTION. SECRETARIAT POSITION, ACCORDING TO FISCHER, WAS THAT SUCH ARRANGEMENT WAS "CONCEIVABLE," BUT WOULD HAVE TO BE APPROVED BY IAEA BOARD OF GOVERNORS, E.G. IN FEBRUARY. SECRETARIAT NOTED THAT NPT SAFEGUARDS AGREEMENT WITH GREECE, APPROVED BY THE BOARD, CONTAINS PROVISION PERMITTING AGREEMENT TO COME INTO FORCE "PROVISIONALLY" PENDING COMPLICATED CONSTITUTIONAL PROCEDURE.

4. SECRETARIAT, ACCORDING TO FISCHER, AGREED TO CONSIDER EURATOM PROPOSAL BUT ALSO MADE COUNTER-PROPOSAL THAT, RATHER THAN HAVE IAEA - EURATOM AGREEMENT "ENTER INTO FORCE PROVISIONALLY" (WHICH IS SECRETARIAT'S INTERPRETATION OF "DE FACTO" APPROACH), THE GOVERNMENTS AND EC WOULD, IN ACCORDANCE WITH ARTICLE 25 OF IAEA-EURATOM AGREEMENT, GIVE "NOTIFICATION THAT THEIR OWN REQUIREMENTS FOR ENTRY

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INTO FORCE HAVE BEEN MET" BUT FRG, FOR EXAMPLE WOULD AD "PROVISIONALLY." THIS APPROACH WOULD PERMIT THE AGREEMENT TO ENTER INTO FORCE AND BECOME BINDING ON ALL THE PARTIES, LEAVING IT TO THE INDIVIDUAL GOVERNMENTS TO REPLACE WHATEVER PROVISIONAL ARRANGEMENTS HAD BEEN MADE WITHIN THEIR OWN TERRITORIES (SUCH AS "CONTRACTUAL" ONES) WITH PERMANENT ARRANGEMENTS ON WHATEVER SCHEDULE WAS POSSIBLE. THIS APPROACH WOULD NOT REQUIRE APPROVAL OF THE BOARD OF GOVERNORS.

5. ACCORDING TO FISHER, BOTH SIDES AGREE TO STUDY THE RESPECTIVE PROPOSALS AND MEET AGAIN IN EARLY JANUARY.

6. PRINCIPAL RESERVATION BY SECRETARIAT, SHARED BY MISSION, RE EURATOM PROPOSAL IS THAT DURING PERIOD OF "PROVISIONAL IMPLEMENTATION" DISPUTES WILL ARISE (INEVITABLY, IF RECORD TO DATE IS ANY INDICATION)

CONCERNING IAEA'S RIGHTS AND RESPONSIBILITIES. SUCH DISPUTES WOULD THEN PROVIDE BASIS FOR OBJECTIONS WITHIN ONE OR MORE STATES TO ENACTMENT OF ENABLING LEGISLATION AND THUS BLOCK ENTRY INTO FORCE OF IAEA-EURATOM AGREEMENT. UNDER SECRETARIAT COUNTER-PROPOSAL, IAEA-EURATOM AGREEMENT WILL HAVE ENTERED INTO FORCE WITH FULL FORCE AND EFFECT AND QUESTIONS OF NON-COMPLIANCE OR DISPUTES WILL BE DEALT WITH AS PROVIDED FOR IN AGREEMENT.

7 SECRETARIAT IS ALSO CONCERNED THAT "CONTRACTUAL ARRANGEMENTS" BETWEEN INDIVIDUAL GOVERNMENTS AND PLANT OPERATORS WITHIN THEIR RESPECTIVE TERRITORIES WILL BE AS INCONSISTENT WITH THE TERMS OF INFCIRC/193 AS THE ABORTED EC REGULATION (REFTEL C) AND, IN ANY EVENT, WILL BE DIFFICULT FOR THE GOVERNMENTS TO ENFORCE. AUTHORITY OF GOVERNMENT TO REQUIRE COMPLIANCE WITH DOMESTIC LAW AND REGULATION IS MUCH MORE CONFIDENTIAL

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RELIABLE THAN ENFORCEMENT OF CONTRACT. LATTER WOULD REQUIRE GOVERNMENT TO BRING CIVIL SUIT AGAINST PLANT OPERATOR. WHAT WITH APPEALS, ETC., PROCESS COULD DRAG OUT FOR MONTHS, WHILE IAEA INSPECTOR IS LEFT OUT IN COLD, FOR EXAMPLE. ACQUIESCENCE BY IAEA IN "PROVISIONAL" OR "DE FACTO IMPLEMENTATION" BY EXCHANGE OF LETTERS COULD IMPLY IAEA ACQUIESCENCE IN "CONTRACTUAL ARRANGEMENTS" BETWEEN GOVERNMENT AND PLANT OPERATORS AND THUS LEAVE IAEA IN PRACTICAL POSITION OF HAVING TO AWAIT OUTCOME OF CIVIL SUITS BEFORE INVOKING NON-COMPLIANCE PROVISIONS CONTAINED IN INFCIRC/193. UNDER SECRETARIAT COUNTER-PROPOSAL, ON OTHERHAND, IAEA WOULD NOT HAVE TO LOOK BEHIND NOTIFICATIONS BY GOVERNMENTS AS TO NATURE OF LATTER'S PROVISIONAL ARRANGEMENTS WITHIN THEIR RESPECTIVE TERRITORIES. THUS, THERE WOULD BE NO QUESTION OF ABILITY OF IAEA TO INVOKE NON-COMPLIANCE PROVISIONS OF IAEA-EURATOM AGREEMENT.

8. FROM TACTICAL POINT OF VIEW, MISSION NOTES THAT EURATOM PROPOSAL WOULD REQUIRE BOARD CONSIDERATION WHICH WOULD PROVIDE OPPORTUNITY FOR EXPRESSIONS BY ALL BOARD MEMBERS CONCERNING PACE OF STEPS TO BRING INTO FORCE AGREEMENT APPROVED BY BOARD IN 1972 AND SIGNED BY ALL PARTIES IN 1973. SECRETARIAT MAY BE QUESTIONED BY ANY BOARD MEMBER CONCERNING PROGRESS IN NEGOTIATION OF SUBSIDIARY ARRANGEMENTS, ETC. MOREOVER, BOARD COULD REQUEST DIRGEN TO REPORT AT EACH OF ITS SUCCESSIVE MEETINGS RE PROGRESS AND ACTIONS IN "PROVISIONAL

IMPLEMENTATION". SECRETARIAT COUNTER-PROPOSAL,
ON OTHER HAND COULD AVOID USE OF BOARD AS FORUM FOR
SUCH EXPRESSIONS.

9.. FISCHER HAS ADVISED MISSION THAT DIRGEN INTENDS
TO CONSULT KEY MISSIONS PRIOR TO BOARD, PRESUMABLY
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AFTER SECRETARIAT-EURATOM MEETING EARLY
JANUARY. ACCORDING TO FISCHER, DIRGEN HAS TAKEN FIRM
POSITION THAT THE HAS AUTHORITY ONLY TO BRING
AGREEMENT INTO FORCE IN ACCORDANCE WITH
ARTICLE 25 OF INFCIRC/193 AND THAT ANY ACTION SHORT
OF THAT WILL REQUIRE BOARD APPROVAL. LABOWITZ

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